Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	§	
	§	
Reorganization and Revision of	§	
Parts 1, 2, 21, and 94 of	§	WT Docket No. 94-148
the Rules to Establish a New	§	
Part 101 Governing Terrestrial	§	
Microwave Fixed Radio Services	§	

To: The Commission

COMMENTS OF
SBC COMMUNICATIONS, INC.

Respectfully submitted,

SBC COMMUNICATIONS, INC.

James D. Ellis
Sr. Executive Vice President
Mary Marks
Attorney
175 E. Houston, Suite 1306
San Antonio, Texas 78205
(210) 351-3478

SOUTHWESTERN BELL MOBILE SYSTEMS, INC.
Wayne Watts
Vice President and General Attorney
Bruce E. Beard
Attorney
17330 Preston Road, Suite 100A
Dallas, Texas 75252
(214) 733-2180

February 17, 1995

TABLE OF CONTENTS

SUMMARY

SBC supports the Commission's efforts in restructuring the microwave rules, including the elimination of redundant and obsolete language from the rules. SBC supports simplification in the general application requirements, including the adoption of identical application forms for both Common Carriers and Private Operational Fixed Point-to-Point Microwave Services. SBC also believes that simplification can be achieved by limiting the ownership information required from licensees to the licensee, its parent and any affiliates or subsidiaries holding licenses. Further, the transfer requirements should be modified to require the Commission to be notified only of a failure to consummate a transfer.

The Commission should include rules for blanket special temporary authority requests. Such requests are essential to growing wireless operations and do not cause harm as they are premised on the condition that they will not cause interference and that should interference occur, operations will immediately be terminated. Further, Common Carriers should be allowed to start construction of stations in advance of receiving a license. The only party at risk if construction is started prior to the granting of the license is the Common Carrier who is making the decision.

Disputes will inevitably arise out of the rules regarding the relocation of existing licensees using the 2GHz spectrum by emerging technology licensees. The Commission should mandate that

alternative dispute resolution be followed in resolving such disputes. Such procedures should include an arbitration process similar to that used by Major League Baseball for free agency arbitration wherein each side presents what it feels is the reasonable value and then the arbitrator is forced to choose one side or the other.

Various other minor revisions should be made to the Part 101 rules. The requirement that a licensee file certifying that construction has been completed and that the station is operational should be eliminated as it is simply a clerical task. The Commission's rules regarding antenna structures for Part 101 licensees should be consistent with the Commission's efforts in the recently announced Antenna Structure Rules Revision proceeding. Finally, the Commission should publish a list of antenna radiation patterns currently on file at the Commission so as to avoid duplication in filing. Section 101.103(d)(2)(xii) should be modified to allow licensees needing large spectrum blocks to file for such blocks currently being held for "future growth". Finally, potential licensees should be required to coordinate frequencies with holders of blanket temporary authority under 101.715 who request coordination.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	§	
	§	
Reorganization and Revision of	§	
Parts 1, 2, 21, and 94 of	§	WT Docket No. 94-148
the Rules to Establish a New	§	
Part 101 Governing Terrestrial	§	
Microwave Fixed Radio Services	§	

COMMENTS OF
SBC COMMUNICATIONS, INC.

SBC Communications, Inc. ("SBC") files the following comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") in this proceeding.[1] SBC supports the Commission's objectives of; 1) restructuring the microwave rules so that they are easier to understand and use, 2) conforming similar rule provisions to the maximum extent possible, and 3) eliminating redundancy and removing obsolete language.[2] SBC makes the following suggestions to further these objectives:

I. GENERAL APPLICATION REQUIREMENTS

SBC agrees with the NPRM's tentative conclusion that the certification of financial ability and public interest statements should be eliminated.[3] SBC also supports the elimination of the

---

[1] In the Matter of Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-148, Notice of Proposed Rulemaking (Released December 28, 1994).

[2] NPRM, para. 1.

[3] See, NPRM, at para. 11.

requirement that applicants submit a copy of any franchise or authorization required by local law.[4]

SBC also agrees with the proposal to eliminate mandated showings of control and maintenance.[5] The NPRM requests comments on whether such showings should be replaced by a general rule, similar to 22.205, mandating a licensee's responsibility for control and maintenance and requiring maintenance contracts to be in writing. SBC believes that a rule similar to that in Part 22 is appropriate, however 22.205 has been revised and is now 22.305.[6] Revised Section 22.305 mandates that "Station licensees are responsible for the proper operation and maintenance of their stations, and for compliance with FCC rules" but does not specifically require that maintenance contracts be in writing. The requirement of a written contract is not essential--it says nothing of the quality, experience, or training of the party providing the maintenance and does not excuse the operator from ultimate responsibility. The Commission should follow the precedent set in revising the Part 22 rules and should simply state that the licensee is responsible for the ultimate operation and maintenance of the station and leave to the licensee how it complies with such obligation.

---

[4]See, Id.

[5]See, Id.

[6]In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket 92-115, Report and Order, Appendix B, B-26 (Released Sept. 9, 1994).

The NPRM also requests comments on whether it should adopt requirements regarding the retention or posting of the station license. SBC supports requirements similar to those adopted by this Commission in Part 22.[7] Part 22.301 provides in pertinent part that:

> A clearly legible photocopy of the authorization must be available at each regularly attended control point of the station, or in lieu of this photocopy, licensees may instead make available at each regularly attended control point the address or location where the licensee's current authorization and other records may be found.[8]

SBC also believes that the maintenance center address and telephone number information required per 21.15(e)(1) should be retained and apply to both services as this information is useful to other operators in resolving problems due to operations. For example, radio operators are able to resolve interference problems more quickly if the maintenance center address and telephone number of neighboring operators is readily available. Further, the availability of such information is also useful to FCC Field personnel when they are required to conduct interference investigations.

While SBC recognizes there are differences between Common Carriers (CCs) and Private Operational Fixed Point-to-Point Microwave Services (POFS) that need to be addressed in separate Subparts, the Commission is urged to take full advantage of this simplification effort by consolidating or eliminating subparts

---

[7]See, 47 CFR 22.301 (Part 22 Rewrite Order, Appendix B, B-27).

[8]47 CFR 22.303.

wherever possible. More specifically, SBC recommends the Commission either adopt identical application forms for both services in those instances where the information continues to serve a valid purpose, or eliminate the forms for both services where the information is no longer necessary. For example, since the information filed in Form 402 for POFS and Form 494 for CCs is nearly identical, the Commission could easily consolidate these two forms into a single form. Further, the Commission should consider eliminating certain Forms that are currently filed by CCs, but not POFS (specifically, Forms 494A and 701). Not only is it inequitable to require CCs, and not POFS, to file these forms, but SBC believes the elimination of these forms is appropriate since the information serves no useful purpose to either the FCC or to the fixed microwave user community.

II. LICENSEE QUALIFICATIONS AND CONSUMMATION OF ASSIGNMENTS AND TRANSFERS.

The NPRM requests comments on precisely what ownership (including partnership) and character information should be required of common carrier applicants and licensees under the new Part 101.[9] SBC believes that the ownership information required can be reduced. For corporations, information should only be required about the parent, the licensee and any affiliates or subsidiaries holding licenses. In the alternative, SBC believes

[9] NPRM, para. 12.

that guidelines similar to those contained in Part 22 should be used for consistency and clarity.[10]

The NPRM also requests comments on the current requirement that applicants must complete assignments or transfers of control within 45 days of the date of authorization and must notify the Commission within 10 days of the consummation. As the NPRM notes, extensions are frequently required, requested and granted.[11] The reporting is basically administrative--SBC supports the NPRM's proposal that applicants merely be required to notify the Commission of a failure to consummate.[12]

III. THE COMMISSION SHOULD CODIFY THE USE OF BLANKET SPECIAL TEMPORARY AUTHORITY GRANTS.

The proposed rules provide for Special Temporary Authority requests but do not address Blanket Special Temporary Authority requests.[13] In the past the Chief of the Microwave Branch has granted requests for blanket special temporary authority to construct and operate common carrier point to point microwave radio systems until such time as a pending request for permanent authorization is acted upon. A copy of a recently granted request for Blanket Special Temporary Authority is attached as Exhibit 1. As noted on Exhibit 1 the grant is normally for a set period of time and conditioned upon the applicant certifying compliance with

---

[10]See, 47 CFR 22.108 (Part 22 Rewrite Order, Appendix B, B-14).

[11]NPRM, para. 12.

[12]Id.

[13]See, NPRM, pp. 46-47 (101.31).

the various rules. For example, the request is made only after frequency coordination requirements and applicable FAA requirements have been complied with. Further, the grant is premised on the condition that it will not cause interference and that should interference occur, operations will be immediately terminated. Given the time lag that may occur between the filing of the application and the actual grant, the blanket authority is essential to growing wireless operations. SBC believes that the Commission should include the requirements for the granting of Blanket Special Authority in the revised rules or at least acknowledge the continued availability of such grants.

IV. COMMON CARRIERS SHOULD BE ALLOWED TO START CONSTRUCTION IN ADVANCE OF RECEIVING A LICENSE

The proposed rules prohibit a common carrier which has filed its license application from commencing construction of the station prior to receiving a license from the Commission.[14] A similar prohibition on construction is not placed on POFS.[15]

At the time the application is filed the common carrier will have complied with any necessary environmental impact assessments, any applicable FAA "No Hazard Determination" and any applicable frequency coordination procedures.[16] The common carrier is not allowed to begin operating the station until the license is

---

[14]See, 101.5(a) and 101.15(a).

[15]See, 101.13.

[16]See, 101.5, 101.21 and 101.103(d).

granted.[17] The only party at risk if construction is started prior to the granting of the license is the common carrier. The common carrier is gambling that the license will be granted otherwise it has wasted the time and expense associated with the construction. Like the POFS the common carrier should have the right to assume this risk.

V. THE EMERGING TECHNOLOGY RULES ARE VAGUE AND SHOULD ADDRESS DISPUTE RESOLUTION.

Section 101.69 addresses the relocation of existing licensees using the 2 GHz spectrum by emerging technologies licensees. The rules provide that the Commission will amend the operation license of the fixed microwave operator to secondary status only if various requirements are performed by the emerging technology including: 1) payment of all relocation costs 2), completion of all activities necessary for implementing the replacement facilities (including identifying and obtaining new microwave frequencies and frequency coordination on the incumbents behalf) and 3) the building and testing of the facilities. The rules are vague in that it is unclear from the language the process to be followed in terms of timing i.e. must all of the requirements be met before requesting the amendment to secondary status or are the requirements part of the amendment proceeding. In addition, the broad rules will inevitably lead to conflicts because the emerging technology is required to pay "all relocation costs" not

[17] See, 101.5(a).

just "reasonable" relocation costs.[18] The reasonable cost test is imposed for "additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium" however there will still be disputes as to what is "reasonable".[19]

The Commission should promulgate specific rules for dispute resolution, including mandatory use of alternative dispute resolution. The Commission has already adopted rules encouraging the use of alternative dispute resolution.[20] Mandating alternative dispute resolution would be the most efficient way to resolve the various disputes that are bound to arise during mandatory relocation. SBC suggests that the rules include provisions for resolving "reasonable cost" disputes similar to that used in Major League Baseball Free Agency. Each side would decide what it believes is reasonable, would introduce evidence to support that belief and the arbitrator would be required to choose one side or the other. Forcing the arbitrator to choose one side or the other, rather than splitting the difference, makes the sides more realistic in their requests. Mandatory alternative dispute rules will expedite the relocation process and provide for a smoother transition.

VI. REVISIONS TO PART 101 RULES

A. Rules 101.63 and 101.37

---

[18] NPRM, p. 65 (101.69(c)(1)).

[19] Id.

[20] 47 CFR 1.18.

Rule 101.63 retains the requirement that a licensee must file a Form 495A certifying that construction has been completed and that the station is operational. Form 495A is simply a clerical task--it does not require Commission action. SBC favors the elimination of the Form 495A requirement, with continuation of the requirement that the license be submitted for cancellation if the station is taken out of operation.

If the Commission continues to require the filing of Form 495As then the Commission should acknowledge receipt of the Form through the Public Notice provisions of 101.37. Giving Public Notice of the receipt of the 495As would give the licensees formal acknowledgement that the Form has been received and filed with the appropriate group.

SBC also believes that the construction interval of 12 months, as defined in 101.63(a) should be changed to 18 months, consistent with 101.63(b). Using 18 months for both POFS and CCs is desirable because of various delays that may occur which are beyond the control of the licensee.

B. Rule 101.21(c)

Proposed rule 101.21(c) requires the inclusion of an antenna radiation pattern showing the antenna power gain distribution "unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC-ID number that indicates that the pattern is on file with the Commission".[21] In order to avoid duplication of

[21] NPRM, p. 43 (101.21(c)).

filings, the Commission should publish a list of the patterns currently on file. Without such a list licensees will be uncertain as to what patterns are on file and thus will be compelled to file any pattern which they have not previously filed themselves.

C. Rules 101.21, 101.119 & 101.121

Sections 101.21, 101.119 and 101.121 pertain to the construction, painting and illumination of antenna structures. Following the release of the NPRM in this docket the Commission opened a new docket "to streamline the antenna clearance process, replacing the current clearance procedures which apply to licensees and permitees with a uniform registration process for structure owners".[22] A primary goal in the current docket is to "conform similar rule provisions to the greatest extent possible".[23] The rules regarding antenna structures for Part 101 licensees should be consistent with the Commission's efforts in the Antenna Structure Rules Revision Proceeding. A consistent definition of antenna structure for all services and forms is desirable and should be codified. Further, Part 101 applicants should be given the option of merely indicating "whether any notification of the FAA has been

---

[22]In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction , Marking, and Lighting of Antenna Structures, WT Docket No. 95-5, Notice of Proposed Rulemaking (Released January 20, 1995). (Antenna Structure Rules Revision Proceeding).

[23]NPRM, para. 1.

made"[24] or attaching a copy of the FAA "no hazard determination" as proposed in the wording of 101.21(a).

Further, SBC notes that the reference in Section 101.21 to see "Section 101.221 if the structure is used by more than one station" is incorrect. Section 101.119 deals with simultaneous use of structures, not 101.221. In addition, Section 101.119 refers to Section 101.21(d) which is non-existent -- the correct cite would be 101.21(a).

D. Rule 101.103 (d)(2)(xii)

The Commission takes necessary steps in Section 101.103(d)(2)(xii) to prevent needed frequencies reserved for future growth from going unused. Under the current proposed rule the licensee holding the frequency for future growth is required to 1) file for the frequency within six months of receiving a showing from another licensee that it requires the additional frequency or 2) release the frequency so it can be put into productive use by the other licensee. There are already instances where carriers are continuously holding all of the spectrum in the lower 6 GHz band in an area by simply renewing frequency protection for growth channels by paying a nominal annual fee. Thus, the proposed rule is needed to protect such hoarding of the spectrum.

The proposed rule however does not go far enough. The rule should protect not only instances where no frequency is otherwise available but situations where other licensees need the larger spectrum blocks for capacity reasons. If larger spectrum

---

[24] See, 21.15(a)(4)(d).

blocks are going unused, a licensee should not be relegated to having to construct more paths or add repeater locations in order to achieve the needed capacity from what is available. With migration plans underway to clear spectrum for PCS, Mobile Satellite Services and other emerging technologies, it is not in the public interest to allow carriers to hold spectrum for "future growth" in the larger spectrum blocks so that other licensees have to move to blocks where, for capacity reasons additional paths or repeaters must be used thus causing service delays and financial burdens.

The public interest is not served by leaving spectrum unused and reserved indefinitely for "future growth" when there are licensees who are ready to file to use the spectrum for commercial service, but instead must incur service delays and additional costs by using the smaller available blocks. Thus SBC suggests that Section 101(d)(2)(xii) be modified as shown below by adding the underscored language:

> "Any frequency reserved by a licensee for future use in the bands subject to this Part must, upon a showing by another licensee that it requires an additional frequency and cannot coordinate one that is not reserved for future use, or, upon a showing by another licensee that there is not an available band width that is of sufficient capacity to handle the licensee's service requirements without using multiple channels, file for the frequency within six (6) months after receiving such a showing or release the frequency for use by the requesting licensee."

E. Rule 101.103(d)(1) & 101.713(a)

Frequency coordination is an important part of the Commission's rules as it helps assure that licensees will operate

with a minimal amount of interference. The importance of frequency coordination is critical to licensees who have blanket temporary licenses under 101.715 to operate during emergency situations such as natural disasters or catastrophic telecommunications infrastructure failures. Thus, coordination with the holders of such licenses is especially critical since time is of the essence in times of such emergencies. Thus, it is necessary that the databases which such licensees refer to find a clear frequency to operate on in an emergency are up to date and accurate.

In order to assure that the holders of such blanket temporary licenses have accurate information to rely on Sections 101.103(d)(1) and 101.713(a) should be modified to include coordination with holders of blanket Section 101.715 license holders who have requested coordination. Thus, the Sections should be modified as shown below by adding the underscored language:

> with existing users in the area, <u>holders of blanket temporary authority under 101.715 who have requested coordination</u>, and other applicants . . .

The Commission could set up a simple process for Section 101.715 licensees wanting to be included in the frequency coordination to identify themselves or could request that the matter be handled through the National Spectrum Managers Association.

CONCLUSION

For the reasons stated herein the rules should be modified as stated above.

Respectfully submitted,

SBC COMMUNICATIONS, INC.

By: James D. Ellis
Sr. Executive Vice President
Mary Marks
Attorney
175 E. Houston, Suite 1306
San Antonio, Texas 78205
(210) 351-3478

SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

By: Wayne Watts
Vice President and General Attorney
Bruce E. Beard
Attorney
17330 Preston Road, Suite 100A
Dallas, Texas 75252
(214) 733-2180

EXHIBIT 1

January 6, 1995

1. Southwestern Bell Mobile Systems, Inc.
2. 17330 Preston Road, Suite 100A, Dallas, Texas 75252
3. Wayne Watts
4. (214) 733-2008
5. Fax Number: (214) 733-2004

Federal Communications Commission
Common Carrier Domestic Radio
P.O. Box 358680
Pittsburgh, Pennsylvania 15251-5680

Attention: Mr. Michael B. Hayden

Dear Mr. Hayden:

WMS621

Re: Request for Blanket Special Temporary Authority

Southwestern Bell Mobile Systems, Inc., on behalf of itself and its wholly owned or controlled subsidiaries, its affiliates, and its partners, requests blanket special temporary authority (BSTA) to construct and operate common carrier point-to-point microwave radio systems at various locations within the United States until such time as a request for permanent authorization is acted upon by the Commission, such period not to exceed six months.

In support of our request, we certify the following:

1. BSTA would apply only to Part 21 stations for which an application has been accepted for filing by the Commission, and which has appeared on public notice in the document issued weekly by the Commission entitled "PRIVATE RADIO BUREAU PART 21 RECEIPTS AND DISPOSALS";

2. All operations conducted under the BSTA will be in exact accordance with an associated applications(s) on file with the Commission with the exception of those minor modifications which may be made without prior notice to the Commission under Section 21.42 of the Commission's Rules. In the event that such modification(s) is made, the appropriate Form 494 will be timely filed with the Commission in accordance with Section 21.42 (b) (3) of the Commission's Rules.

3. The associated application(s) will not have been dismissed, granted, or otherwise finally disposed of by the Commission. When the associated application(s) is finally disposed of by the Commission, the BSTA would cease to be effective with respect to that application(s);

4. The associated application(s) will not require a waiver of the Commission's rules;

5. The associated application(s) does not propose operation within 35 miles of any international border nor within a radio "Quiet Zone" and monitoring facilities, see Section 21.113 of the Commission's rules, 47 C.F.R. Sec. 21.113;

6. The antenna(s) is no more than twenty (20) feet above the ground or manmade structure other than a tower or pole, or is mounted on a structure that complies with an existing and approved Federal Aviation Administration Final Determination;

7. All proposed operations have been fully and successfully coordinated as required by Section 21.100 of the Commission's rules, 47 C.F.R. Sec. 21.100;

8. Operation under the BSTA will not cause interference. Should interference occur, we agree that operations will be terminated immediately;

9. We certify that no party to this application, including all of our subsidiaries, partners and affiliates which will operate under a BSTA, is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Sec. 853 (a); and

10. The associated application(s) will have no significant impact on the environment as set forth in Section 1.1301, et seq. of the Commission's rules, 47 C.F.R. Sec. 1.1301.

It is of critical importance to our ability to compete effectively and/or to transact our business that we receive immediate authority to construct and operate common carrier microwave facilities. The BSTA will be effective for the period granted by the Commission and would cover applications which are filed during the effectiveness of the BSTA.

It is our understanding that if an applicant possesses BSTA Authority, individual STA requests are unnecessary except under extraordinary circumstances. It is our further understanding that during operation under the BSTA, the Commission neither requires nor desires notification of completion of construction or commencement of operation unless we are otherwise directed by the Commission.

A copy of the BSTA and a copy of the associated application(s) will be maintained at the location(s) and in the manner required by Section 21.201 of the Rules. We recognize and accept as a condition of grant of any BSTA that the Commission may at any time and without hearing or notice rescind that BSTA for any reason. We also accept that any operation conducted under authority of the BSTA is at our sole risk and that grant of a BSTA will not prejudice the outcome of action on any application(s) associated with the BSTA.

Our check in the amount of $85.00 and completed FCC Form 159 are enclosed.

Sincerely,

Wayne Watts

Wayne Watts

Vice President - General Attorney & Secretary

January 6, 1995

Enclosures:
$85.00 check
FCC Form 159